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Attorneys for Plaintiff
HERMAN MILLER, INC.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

HERMAN MILLER, INC.

Plaintiff,

v.

BLUMENTHAL DISTRIBUTING, INC.
d/b/a OFFICE STAR PRODUCTS;
JORNG WELL INDUSTRIAL CO., LTD.;
NOVA ASIA INT'L INC.; NOVA
INNOVATIONS INT'L LTD.; and
KING HONG INDUSTRIAL CO., LTD.,

Defendants.

Case No: 2:17-cv-04279 JAK-SP

**DECLARATION OF
JEAN-PAUL CIARDULLO**

in Support of

**HERMAN MILLER, INC.'s
OPPOSITION TO BLUMENTHAL
DISTRIBUTING, INC.'s MOTION
FOR SUMMARY JUDGMENT**

[REDACTED PUBLIC VERSION]

1 I, Jean-Paul Ciardullo, declare as follows:

2 1. I am an attorney with Foley & Lardner LLP, counsel to Herman Miller, Inc.
3 (“Herman Miller”) in this action, and am admitted to practice before the Court.

4 2. Attached hereto as Exhibit 1 are images of the Caper chair.

5 3. Attached hereto as Exhibit 2 are images of accused chairs.

6 4. Attached hereto as Exhibit 3 are true and correct excerpts of the deposition
7 transcript of Richard Blumenthal, taken in this matter on April 5, 2018. The excerpts are
8 being filed UNDER SEAL.

9 5. Attached hereto as Exhibit 4 are true and correct excerpts of the deposition
10 transcript of Joshua Blumenthal, taken in this matter on April 6, 2018. The excerpts are
11 being filed UNDER SEAL.

12 6. Attached hereto as Exhibit 5 are true and correct excerpts of the deposition
13 transcript of Fred Rueda, taken in this matter on March 26, 2018. The excerpts being
14 filed UNDER SEAL.

15 7. Attached hereto as Exhibit 6 are true and correct excerpts of the deposition
16 transcript of Don Smith, taken in this matter on April 5, 2018, The excerpts are being
17 filed UNDER SEAL.

18 8. Attached hereto as Exhibit 7 are true and correct excerpts of the deposition
19 transcript of King Hong Industrial Co., Ltd. Rule 30(b)(6) witness Jerry Chen, taken in
20 this matter on March 8, 2018. The excerpts are being filed UNDER SEAL.

21 9. Attached hereto as Exhibit 9 is a true and correct copy of Exhibit 9 to Jerry
22 Chen’s deposition. This concern manufacturing costs of accused chairs. Exhibit 9 is
23 being filed UNDER SEAL.

24 10. Attached hereto as Exhibit 10 is a true and correct copy of Exhibit 10 to
25 Jerry Chen’s deposition. This concern manufacturing costs of accused chairs. Exhibit 10
26 is being filed UNDER SEAL.

27 11. Attached hereto as Exhibit 11 is a true and correct copy of Exhibit 1 to Don
28 Smith’s deposition. Exhibit 11 is being filed UNDER SEAL.

1 12. Attached hereto as Exhibit 12 are true and correct copies of Herman
2 Miller/Caper Design Patents.

3 13. Attached hereto as Exhibit 13 are true and correct excerpts of the deposition
4 transcript of Lance G. Rake, taken in this matter on June 1, 2018. The excerpts being
5 filed UNDER SEAL.

6 14. Attached hereto as Exhibit 14 are excerpts from the file history for the Caper
7 Trade Dress Application. The application was substantively examined with respect to
8 functionality and the examiner was satisfied on the issue. After publication, Office Star
9 filed an opposition, and the proceedings were stayed pending this case.

10 15. Attached hereto as Exhibit 157 is an email produced by Office Star in this
11 action.

12 16. Attached hereto as Exhibit 158 is an email produced by Office Star in this
13 action.

14 17. Attached hereto as Exhibit 159 is an email produced by Office Star in this
15 action.

16 18. Attached hereto as Exhibit 162 is an email produced by Office Star in this
17 action. This is being filed UNDER SEAL.

18 19. Attached hereto as Exhibit 163 is an email produced by Office Star in this
19 action.

20 20. Attached hereto as Exhibit 163A is an email produced by Office Star in this
21 action. Exhibit 163A includes the attachment cited on page 2 of Exhibit 163.

22 21. Attached hereto as Exhibit 169 is an email produced by Office Star in this
23 action.

24 22. Attached hereto as Exhibit 172 is an email produced by Office Star in this
25 action.

26 23. Attached hereto as Exhibit 175 is an email produced by Office Star in this
27 action.

28 24. Attached hereto as Exhibit 181 is an email produced by Office Star in this

1 action.

2 25. Attached hereto as Exhibit 182 is an email produced by Office Star in this
3 action. This is being filed UNDER SEAL.

4 26. Attached hereto as Exhibit 183 is an email produced by Office Star in this
5 action.

6 27. Attached hereto as Exhibit 189 is an email produced by Office Star in this
7 action.

8 28. Attached hereto as Exhibit 190 is an email produced by Office Star in this
9 action. Images of the 13-77N1P3 and 13-881P3 chairs referenced are attached as
10 Exhibits 227 and 228. As can be seen, these chairs were recommended because they are
11 not stacking chairs and instead have a five-prong wheeled base. Note also that the
12 armrests come up from the back.

13 29. Attached hereto as Exhibit 191 is an email produced by Office Star in this
14 action.

15 30. Attached hereto as Exhibit 193 is an email produced by Office Star in this
16 action.

17 31. Attached hereto as Exhibit 194 is an email produced by Office Star in this
18 action.

19 32. Attached hereto as Exhibit 195 is an email produced by Office Star in this
20 action.

21 33. Attached hereto as Exhibit 197
22 is an email produced by Office Star in this
23 action.

24 34. Attached hereto as Exhibit 199
25 is an email produced by Office Star in this
26 action.

27 35. Shown here is a photo of the
28 upper portion of the rear leg of an Office Star



1 872 Series accused chair adjacent to the lateral extension that it fits into. The rod slips
2 into an opening on the underside the lateral extension and is fixed there with a single
3 screw.

4 36. About five weeks before the discovery cut-off, Office Star served document
5 subpoenas on the third parties. No depositions were sought. Safco initially refused to
6 supply sales data at all. Just days before the close of discovery, MooreCo and OFM
7 provided simplified print outs purporting to show annual sales. Safco waited until almost
8 a month *after* the close of discovery to produce any data (Herman Miller does not know
9 what Office Star said to them to get them to produce).

10 37. Office Star counsel spoke with me and emailed me before filing their motion
11 to ascertain if Herman Miller was pursuing reasonable royalty, harm to reputation, and
12 corrective advertising damages at trial. I indicated that these would be pursued only to
13 the extent rolled up with disgorgement of Office Star's profits. Office Star did not raise
14 the issue of equitable disgorgement by the Court after trial, nor did I understand their
15 questions to be directed to that as we were focused on the non-disgorgement remedies.
16 The concept of a post-trial equitable disgorgement proceeding was discussed at length
17 during the last lawsuit. I do not think Office Star was trying to ascertain if we would
18 pursue the same approach in this case, but thought it helpful to provide this clarification.
19 In any event, there is no other discovery or analysis required at this point to address
20 equitable disgorgement – it is simply an optional damages avenue that the Court can
21 consider after hearing all of the evidence at trial.

22 38. The identity of Office Star's customers for accused products had been
23 sought in Herman Miller's July 24, 2017 Requests for Production, but Office Star
24 initially failed to produce the information. Herman Miller initiated procedures under
25 L.R. 37-2 to move to compel, but Office Star ultimately agreed to produce, and provided
26 the data in about March 2018. Combined with deposition testimony from the March 2018
27 depositions of Office Star witnesses, Herman Miller finally appreciated that Office Star
28 had interfered with its dealer contracts with respect to Caper. In light of this, Herman

1 Miller alerted Office Star by letter dated April 22, 2018 that it intended to ultimately seek
2 jury instructions on its unfair competition claims that would be based on theories of
3 liability broader in scope than the Lanham Act, and encompassing Office Star's acts of
4 product substitution and interference.
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6

7 I declare under penalty of perjury that the foregoing is true and correct, and that if
8 called at trial I would testify to the same.
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13 Dated: June 25, 2018

Jean-Paul Ciardullo